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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

JAMES G. LEWIS,

Plaintiff and Appellant,

v.

BARBER RV et al.,

Defendants and Respondents.

2d Civil. No. B293622
(Super. Ct. No. 56-2017-00498034-CU-BC-VTA)
(Ventura County)

James Lewis sued Barber RV, Kirby Auto Group and Chuck Mundy (collectively respondents) for falsely advertising the price of a recreational vehicle (RV). Respondents moved for summary judgment. The trial court granted the motion and entered judgment for respondents. We affirm.

FACTS AND PROCEDURAL HISTORY

Lewis saw an advertisement on Barber RV's website for a used Sunseeker 2400W and inquired about the RV. Mundy contacted Lewis and informed him that the Sunseeker 2400W model had sold but that he recently listed another model

(Sunseeker 2400R) for $54,995. At 3:59 p.m., Lewis called Mundy. After the phone call, Mundy changed the price of the Sunseeker 2400R to $84,995 on Barber RV's website. Later in the afternoon, Lewis sent Mundy an e-mail stating that he was "interested. Not exactly what we wanted, but close enough at a good price point." Lewis said he could be at Barber RV the next day if the RV was ready.

About a half hour later, Mundy sent a reply e-mail with an apology for the "typo," and said he "was not trying to be misleading." He commented that Lewis's "offer of 62 to 63K is crazy but a good price," but that "[m]anagement has not and probably will not respond to my request without a financial commitment from you."

The next morning, Lewis went to Barber RV. Lewis looked at both Sunseeker 2400W and 2400R models and made an offer to purchase the 2400R model for $65,000 plus fees. Manager Michael Arrambide rejected the offer. The next day, Lewis sent Barber RV a Consumers Legal Remedies Act (CLRA) demand letter.

Lewis subsequently filed a complaint alleging a violation of the CLRA against all respondents, and breach of contract against Barber RV and Kirby Auto Group. Respondents filed a motion for summary judgment, a separate statement of undisputed facts, declarations of Mundy and Arrambide, and exhibits in support of these declarations. Lewis filed an opposition, his declaration, one exhibit, and a separate statement of uncontested and contested facts. In his separate statement, Lewis disputed certain facts asserted by respondents and referenced his own declaration as supporting evidence. He did not present any additional facts.

Following a hearing, the trial court granted the motion for summary judgment. It found that "[a]s to the CLRA cause of action, the evidence shows no intent NOT to sell the RV as advertised, no causation and no damages. As to the breach of contract action, the evidence shows that the offer was revoked before acceptance." The court found that Lewis's opposition "argues that questions of fact remain, but does not object to [respondents' evidence], and offers no additional facts."

DISCUSSION

Defective briefs

Respondents contend that Lewis's opening brief is procedurally defective and does not specify "any error justifying reversal." We agree.

An appellant bears the burden of affirmatively demonstrating error. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) "Whether legal or factual, no error warrants reversal unless the appellant can show injury from the error." (*City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 286.) "[T]o demonstrate error, an appellant must supply the reviewing court with some cogent argument supported by legal analysis." (*Id*. at pp. 286-287.) "[W]e may disregard conclusory arguments that are not supported by pertinent legal authority or fail to disclose the reasoning by which the appellant reached the conclusions [they] want[] us to adopt." (*Id*. at p. 287.)

Lewis does not affirmatively show error. The argument sections of the briefs suffer from a lack of coherent legal analysis and consist of recitation of legal principles with little or no application to the facts of the case. Lewis does not specify error in the trial court's findings on intent, causation, or damages on the CLRA cause of action or its finding of revocation

of the offer on the breach of contract cause of action. Instead, he concludes without explanation that there are triable issues of fact and lists several immaterial facts in dispute (e.g., whether a Sunseeker 2400W sold the week before or three weeks before or whether Mundy sent the apology e-mail at 5:59 p.m. or at 11:36 p.m.). He does not explain how these disputed facts are material. He concludes without further explanation or citation to supporting evidence that there is a "triable issue of fact whether Barber RV violated the law" through false advertisement. In addition, Lewis presents new arguments regarding violations of the Business and Professions Code sections 17200 and 17500 and Vehicle Code section 11713 for the first time on appeal. We do not consider arguments that were not raised below. (*Mattco Forge, Inc. v. Arthur Young & Co.* (1997) 52 Cal.App.4th 820, 847.)

Lewis's opening brief also does not comply with appellate rules because it does not contain proper citations to the record. "Each and every statement in a brief regarding matters that are in the record on appeal, whether factual or procedural, must be supported by a citation to the record." (*Lona v. Citibank, N.A.* (2011) 202 Cal.App.4th 89, 96-97, fn. 2; see Cal. Rules of Court, rule 8.204(a)(1)(C).) "The claimed existence of facts that are not supported by citations to pages in the appellate record, or not appropriately supported by citations, cannot be considered by this court." (*Mueller v. County of Los Angeles* (2009) 176 Cal.App.4th 809, 816, fn. 5.) Here, the argument section of Lewis's opening brief contains only one record citation. Because other factual assertions in the argument section are not supported by appropriate reference to the record, we may

disregard them. (*Ibid.*; *Lueras v. BAC Home Loans Servicing, LP* (2013) 221 Cal.App.4th 49, 60.)

Summary Judgment

On the merits, we conclude the trial court properly granted the motion for summary judgment. Summary judgment is appropriate "if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).) The defendant bears the initial burden of showing that the plaintiff cannot establish one or more elements of the cause of action, or that there is an affirmative defense to it. (Code Civ. Proc., § 437c, subd. (*o*); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850 (*Aguilar*).) If the defendant makes one of the required showings, the burden shifts to the plaintiff to establish a triable issue of material fact. (*Aguilar*, at p. 850.)

Our review is de novo. (*Knapp v. Doherty* (2004) 123 Cal.App.4th 76, 84.) We liberally construe the opposing party's evidence and resolve all doubts in favor of the opposing party. (*Lyle v. Warner Brothers Television Productions* (2006) 38 Cal.4th 264, 274.) We consider all evidence set forth in the moving and opposition papers, except evidence to which objections were properly sustained. (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1037.) We may affirm the judgment on any basis; we review the trial court's ruling, not its rationale. (*Salazar v. Southern Cal. Gas Co.* (1997) 54 Cal.App.4th 1370, 1376.)

Lewis alleged that respondents violated the CLRA statute by advertising the Sunseeker 2400R with intent not to sell it as advertised. (Civ. Code, § 1770, subd. (a).) To establish a CLRA violation, a plaintiff must establish causation and damages. (Civ. Code, § 1780, subd. (a); *Wilens v. TD Waterhouse*

Group, Inc. (2003) 120 Cal.App.4th 746, 754 ["Relief under the CLRA is specifically limited to those who suffer damage, making causation a necessary element of proof"].)

Lewis did not establish causation or damages. Respondents showed that Mundy informed Lewis about the pricing error during a 3:59 p.m. phone call and minutes later corrected the error on the advertisement. Mundy later sent an e-mail in which he apologized for the "typo" in pricing. Lewis came into Barber RV the next day and offered $65,000 on the Sunseeker 2400R, and respondents rejected the offer. Respondents submitted the declarations of Mundy and Arrambide, a call log, and the apology e-mail as supporting evidence of these facts. In his opposition, Lewis disputed that the 3:59 p.m. phone call occurred and that Mundy informed him about the pricing error. He cited to his own declaration as supporting evidence.

Even if we construe Lewis's declaration in his favor, nothing in his opposition or declaration shows that the disputed facts are material or that he suffered damages as a result of the advertisement. Lewis does not dispute respondents corrected the advertised price of the RV before Lewis made an offer; nor does he dispute he made an offer of $65,000, which respondents rejected. He presented no facts or evidence of an offer and acceptance at the $54,995 price. Lewis therefore did not establish a triable issue of material fact on causation and damages.[1]

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[1] Because Lewis's opening brief does not address breach of contract, he waives any issue regarding this cause of action on appeal. (*1119 Delaware v. Continental Land Title Co.* (1993) 16 Cal.App.4th 992, 1004.)

DISPOSITION

The judgment is affirmed. Respondents shall recover their costs on appeal.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Henry J. Walsh, Judge

Superior Court County of Ventura

James G. Lewis, in pro. per., for Plaintiff and Appellant.

LaVere Huff and Matthew W. LaVere, for Defendants and Respondents.